

Docket No.: R2184.0489/P489
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Takanobu Matsuba

Application No.: Not Yet Assigned

Confirmation No.: TBD

Filed: Concurrently herewith

Art Unit: Not Yet Assigned

For: INFORMATION RECORDING AND
REPRODUCING APPARATUS AND A
METHOD OF CONTROLLING AN
INFORMATION RECORDING AND
REPRODUCING APPARATUS

Examiner: Not Yet Assigned

**PETITION TO MAKE NEW APPLICATION SPECIAL
UNDER 37 C.F.R. § 1.102(d) AND M.P.E.P. § 708.02 (VIII)**

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Submitted herewith is a Petition to Make Special the above-identified patent application.

1. Petition:

Applicant hereby petitions to make the above-identified application special pursuant to 37 C.F.R. § 1.102(d) and M.P.E.P. § 708.02(VIII). The application has not yet been examined.

2. Claims:

(a) All of the claims pending in the present application (i.e., claims 1-42) are directed to a single invention.

(b) If the Office determines that all the claims presented are not obviously directed to a single invention, Applicant will make an election without traverse as a prerequisite to the grant of the requested special status.

3. Search:

A pre-examination search was made, in the art classifications believed to be most relevant to the claimed invention. (See attached International Search Report). The pre-examination search was directed to the invention as claimed in the present application (i.e., claims 1-42). The search included International Patent Classes G11B.

4. References:

The documents uncovered in the search are cited on the attached Form PTO/SB/08.¹ The Office is requested to consider all of the documents and to make them of record using the attached Form PTO/SB/08. Among the listed references, the documents deemed most closely related to the subject matter encompassed by the present claims (claims 1-42) are listed and discussed in detail below:

| <u>Patent Document</u> | <u>Dated</u> |
|------------------------|-------------------|
| (a) US 2003/0048733 | March 13, 2003 |
| (b) US 2005/0036427 | February 17, 2005 |

Applicant reserves the right to establish, where applicable, that one or more of the above documents does not represent prior art against the present invention.

5. Characteristics of the Present Invention:

¹ Copies of the documents discussed in this Petition are enclosed herewith, pursuant to M.P.E.P. § 708.02(VIII).

The independent claims (i.e., claims 1, 16, 31, 35 and 39) of the present invention are characterized by having at least the following configurations:

(a) Claim 1

The method of recording information to a recording medium of claim 1 is characterized by the steps of performing a first formatting process on the data area of the second recording layer and then performing a second formatting process on the data area of the first recording layer once the first formatting process has been completed.

(b) Claim 16

The information recording apparatus of claim 16 is characterized by being arranged to format the data area of a second recording layer of the recording medium according to a first formatting process and then formatting a data area of a first recording layer of the recording medium according to a second formatting process once the first formatting process has been completed.

(c) Claim 31

The information recording and reproducing apparatus of claim 31 is characterized by a controller that controls a formatting process to format a recording medium by starting from one of the recording layers of which recording order of data is latest and progressing the formatting from one of the recording layers of which the recording order is later toward one of the recording layers of which the recording order is earlier.

(d) Claim 35

Claim 35 recites an information recording and reproducing apparatus comprising formatting means for formatting said recording medium by starting from one of the recording layers of which recording order of data is latest and progressing the formatting from one of the recording layers of which the recording order is later toward one of the recording layers of which the recording order is earlier.

(e) Claim 39

Claim 39 recites a method of controlling an information recording and reproducing apparatus. The method comprises formatting a recording medium by starting from one of the recording layers of which recording order of data is latest and progressing the formatting from one of the recording layers of which the recording order is later toward one of the recording layers of which the recording order is earlier.

6. Discussion of the References:

(a) U.S. Patent Publication No. 2003/0048733

U.S. Patent Publication No. 2003/0048733 ("US 2003/0048733") relates to a formatting method for a storage medium. In particular, the reference relates to a method and recording device for formatting and recording on a multi-layer phase-change type optical disc.

Claim 1 recites a method for recording information to a recording medium comprising the steps of "performing a first formatting process on the data area of the second recording layer and . . . performing a second formatting process on the data area of the first recording layer once the first formatting process has been completed." US 2003/0048733, on the other hand, refers to a method that writes the first layer completely before ever writing on the second layer. *See* US 2003/0048733 at paragraph [0019]. Thus, the limitations and features of the present invention are not disclosed or suggested in the reference.

Claim 16 recites an information recording apparatus arranged to format the data area of a second recording layer of the recording medium according to a first formatting process [and] . . . format a data area of a first recording layer of the recording medium according to a second formatting process once the first formatting

process has been completed.” As stated above, US 2003/0048733 refers to a method that writes the first layer completely before ever writing on the second layer. Accordingly, US 2003/0048733 does not disclose, teach or suggest the limitations or features of claim 16.

Claim 31 recites an information recording and reproducing apparatus comprising “a controller that controls a formatting process to format a recording medium by starting from one of the recording layers of which recording order of data is latest and progressing the formatting from one of the recording layers of which the recording order is later toward one of the recording layers of which the recording order is earlier.” As set forth in the above analysis, US 2003/0048733 does not disclose, teach or suggest these features of claim 31.

US 2003/048733 also fails to disclose, teach or suggest the features of claim 35, which recites an information recording and reproducing apparatus comprising “formatting means for formatting said recording medium by starting from one of the recording layers of which recording order of data is latest and progressing the formatting from one of the recording layers of which the recording order is later toward one of the recording layers of which the recording order is earlier.” By contrast, US 2003/0048733 refers to a method that writes the first layer completely before ever writing on the second layer. As such, the reference does not disclose, teach or suggest the features or limitations of the claim 35 invention.

Claim 39 recites a method of controlling an information recording and reproducing apparatus that comprises “formatting a recording medium by starting from one of the recording layers of which recording order of data is latest and progressing the formatting from one of the recording layers of which the recording order is later toward one of the recording layers of which the recording order is

earlier.” US 2003/0048733, on the other hand, refers to a method that writes the first layer completely before ever writing on the second layer. US 2003/0048733 does not disclose, teach or suggest the features or limitations of the claim 39 invention.

(b) U.S. Patent Publication No. 2005/0036427 (“US 2005/0036427”)

US 2005/0036427 relates to a formatting method for a storage medium having a plurality of recording layers. Regarding the formatting method, US 2005/0036427 refers to a general formatting method or a background formatting method, but does not refer to or suggest formatting a second recording layer and then formatting a first recording layer. The reference is silent in regards to such a limitation.

Claim 1 recites a method for recording information to a recording medium comprising the steps of “performing a first formatting process on the data area of the second recording layer and . . . performing a second formatting process on the data area of the first recording layer once the first formatting process has been completed.” US 2005/0036427, on the other hand, merely refers to general and background formatting and does not specify an order for formatting particular recording layers. As such, US 2005/0036427 fails to disclose, teach or suggest the steps of “performing a first formatting process on the data area of the second recording layer and . . . performing a second formatting process on the data area of the first recording layer once the first formatting process has been completed.” Thus, the limitations and features of the claimed invention are not disclosed or suggested in the US 2005/0036427 reference.

Claim 16 recites an information recording apparatus arranged to “format the data area of a second recording layer of the recording medium according to a first formatting process [and] . . . format a data area of a first recording layer of the recording medium according to a second formatting process once the first formatting

process has been completed.” As stated above, US 2005/0036427 refers to a method that does not specify an order for formatting particular recording layers. Accordingly, US 2005/0036427 does not disclose, teach or suggest the limitations or features of claim 16.

Claim 31 recites an information recording and reproducing apparatus comprising “a controller that controls a formatting process to format a recording medium by starting from one of the recording layers of which recording order of data is latest and progressing the formatting from one of the recording layers of which the recording order is later toward one of the recording layers of which the recording order is earlier.” As set forth in the above analysis, US 2005/0036427 does not disclose, teach or suggest the features of claim 31.

US 2005/0036427 also fails to teach or suggest the features of claim 35, which recites an information recording and reproducing apparatus comprising “formatting means for formatting said recording medium by starting from one of the recording layers of which recording order of data is latest and progressing the formatting from one of the recording layers of which the recording order is later toward one of the recording layers of which the recording order is earlier.” US 2005/0036427 does not disclose such a limitation. US 2005/0036427 refers to a method that does not specify an order for formatting particular recording layers. As such, the reference does not disclose, teach or suggest the features or limitations of the claim 35 invention.

Claim 39 recites a method of controlling an information recording and reproducing apparatus that comprises “a formatting step of formatting a recording medium by starting from one of the recording layers of which recording order of data is latest and progressing the formatting from one of the recording layers of which the recording order is later toward one of the recording layers of which the recording order is earlier.” US 2005/0036427, on the other hand, refers to a method that does not specify

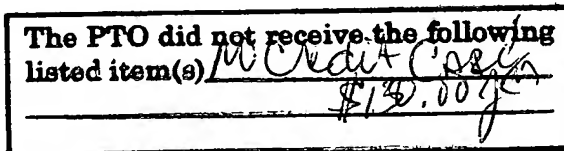
an order for formatting particular recording layers. Accordingly, US 2005/0036427 does not disclose, teach or suggest the features or limitations of the claim 39 invention.

Pursuant to M.P.E.P. § 708.02(VIII), the foregoing discussion, with the particularity required by 37 C.F.R. § 1.111(b) and (c), distinguishes the claimed subject matter from these references and thus, is patentable over the respective documents. Applicants note, however, that there are also additional reasons why the claims should be allowable over the cited documents, in addition to those discussed above. Moreover, Applicants reserve the right to establish, if and where applicable, that one or more documents do not represent prior art against the claimed invention.

7. Fee:

Please charge our Credit Card in the amount of \$130.00 covering the fee set forth in 37 C.F.R. § 1.17(h). Credit Card Payment Form SB-2038, with a signature from an authorized cardholder, is enclosed. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1073, under Order No. R2184.0489/P489. A duplicate copy of this paper is enclosed.

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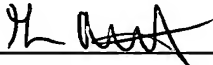
Application No.: Not yet assigned

Docket No.: R2184.0489/P489

Accordingly, Applicant requests that this Petition to Make Special be granted and the application undergo accelerated examination.

Dated: March 29, 2006

Respectfully submitted,

By  _____

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